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LETTER REGARDING SEACOAST ANTI-POLLUTION LEAGUE REVIEW COMMENTS ON
THE JULY 2001 DRAFT FINAL RECORD OF DECISION OF OPERABLE UNIT 3 (OU 3) NSY
PORTSMOUTH ME
7/26/2001
LEPAGE ENVIRONMENTAL SERVICES

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July 26, 2001

Portsmouth Naval Shipyard
Code 106.3R, Bldg. 44
Attn: Ms. Marty Raymond
Portsmouth, New Hampshire 03804-5000

Subject: July 2001 Draft Final *Record of Decision for Operable Unit 3*

Dear Ms. Raymond:

We are transmitting the following comments on behalf of the Seacoast Anti-Pollution League (SAPL) on the July 2001 Draft Final *Record of Decision for Operable Unit 3* (OU3 ROD), and on the Navy's responses to SAPL's May 16, 2001 comments on the Draft OU3 ROD (called Original Comments below):

1. Page 1-3, Section 1.4 DESCRIPTION OF THE SELECTED REMEDY. SAPL had commented previously (Original Comments 7, 52, 61, 62, and 63) on the Navy's proposed timeframe for developing and implementing a plan to collect samples from OU6. The second bullet on page 1-3 states that the work plan for the additional investigation for OU6 will be completed by the time the Jamaica Island Landfill (JILF) cap construction is complete. According to the proposed *Operable Unit 3 Remedial Design and Remedial Action Schedule* (dated April 16, 2001), remedial construction will not be completed until October 2005. SAPL had commented that it should not take over four years to develop an investigation work plan and that the work plan should be completed well in advance of the cap completion. Furthermore, that it is important to gather the information on seep concentrations and potential impacts in the near future, not almost five years down the road. Data should be gathered before the cap is constructed so that it can be evaluated and appropriate measures can be implemented, if necessary. The data should also be compared with concentrations after the cap is installed to test the assumption that the cap will decrease the effects of the seeps.

The Navy responded that it recognized SAPL's concerns, but believes that the schedule presented in the OU3 ROD for the OU6 work plan is the minimum schedule that can be achieved. This does not seem reasonable to SAPL; it should not take over four years to develop and implement a sampling work plan for OU6. A technical meeting will be held within 60 days of the signing of the ROD to develop the data quality objectives (DQOs) for sampling OU6. Developing the DQOs is the most intense activity related to sampling OU6. Once the DQOs are developed, fleshing out a work plan should be relatively easy, and shouldn't take over four years to accomplish. It is not appropriate to specify an almost five-year period to develop the OU6 work plan in the OU3 ROD.

The public has been adamant about the need to sample OU6 immediately. The Navy's delayed approach does not address concerns regarding what the seep impacts are. SAPL believes that OU6 should be sampled before cover construction is complete for a couple of reasons. One is to collect the baseline data necessary to test the Navy's assumption that the cover will decrease the effects of the seeps. These data should be compared with concentrations after the cap is installed to test the assumption. Another reason is that sampling could identify adverse impacts in a timely fashion, so that appropriate measures could also be taken in a timely fashion. Data should be gathered before the cap is constructed so that it can be evaluated and appropriate measures can be implemented, if necessary. It is important to gather the information on seep concentrations and potential impacts in the near future, not five years down the road.

2. Page 1-4, Section 1.4 DESCRIPTION OF THE SELECTED REMEDY. Principal threat wastes are defined in the ROD Glossary as highly toxic or highly mobile source materials that generally cannot be contained in a reliable manner and/or would present a significant risk to human health or the environment should exposure occur. The ROD states on page 1-4 that the remedy will address principal threat waste by providing a cover to minimize infiltration of water through the landfill material and to prevent direct contact with site materials. The ROD should also state that the remedy is not designed to contain or impede migration of contamination from principal threat wastes. While SAPL anticipates that the Navy would characterize such migration to the near or offshore areas as an OU6 (management of migration) or OU4 issue, it is important to identify this limitation of the remedy in the OU3 ROD.

3. Page 2-3, Section 2.2 SITE HISTORY AND ENFORCEMENT ACTIVITIES. SAPL had commented in Original Comments 14 and 22 (dated May 16, 2001) that the industrial wastes that were reportedly disposed at Site 8 should be listed so that the Contaminants of Concern (COCs) described later in the ROD can be put in some kind of context. For instance, given the concerns about dioxin detections on site and offshore, it is important to know that incinerator ash was disposed at Site 8. Other wastes reportedly disposed included plating sludges containing chromium, lead, and cadmium; asbestos; volatile organic compounds; empty acetylene and chlorine gas cylinders; contaminated dredge spoils containing chromium, lead, PCB oils, mercury and possibly phenols; waste paints and solvents; and sandblasting grit.

The Navy responded to Original Comment 14 by saying that the intent of Section 2.2 (and Sections 2.5 and 2.7) is to summarize site information to support the decision document, but refer to the Feasibility Study (FS) for further details. The Navy also believes that sufficient information was provided to understand the site, and refers to Section 2.5 for further description. The Navy responded to Original Comment 22 by saying that Section 2.5 summarizes information from the OU3 FS and it believes the detail in Section 2.5 is sufficient to support the decision document.

SAPL stands by its original comments that the information regarding wastes is needed to put the COCs in context. SAPL does not believe this is unreasonable, particularly because similar basic information is included in RODs relating to other sites at another Naval facility in Maine.

4. Page 2-8, Section 2.4 SCOPE AND ROLE OF OPERABLE UNIT 3. The text revision included Navy's response to SAPL's Original Comment 20 regarding when actions relating to OU6 will be initiated (after the ROD for OU3 is signed) was not made.

5. Page 2-11, Section 2.5 SITE CHARACTERISTICS. As SAPL commented previously (Original Comment 24 dated May 16, 2001), the description of contamination related to Site 11 operations should not be limited to petroleum alone. The site description earlier in the ROD indicates that materials other than waste oil alone were likely disposed in the tanks at Site 11. Furthermore, the waste oil disposed at Site 11 was likely contaminated with metals. Rather than revise the text, the Navy responded that the information provided in Section 2.5 is summarized from the FS. Regardless of what is reported in the FS, it is misleading to characterize the contamination associated with Site 11 as only petroleum. The text should be revised.

6. Page 2-12, Section 2.7.1 Human Health Risk. As SAPL pointed out in Original Comment 28, the first paragraph should be revised to clarify that the revised human health risk assessment for OU3 considered data collected prior to 1998. It did not include the results of the limited soil sampling conducted during the drum investigation test pitting in 2000, where dioxin was detected in several samples. Nor did the sampling conducted prior to 2000 include dioxin analysis. The Navy's response (including a text revision) does not address SAPL's concern that human health risk assessments for OU3 do not include analytical results for dioxin. This is an important shortcoming that should be identified up front, particularly because subsequent sections of the ROD present the assessment results and the decisions made based on those results.

7. Page 2-20, Section 2.8 REMEDIAL ACTION OBJECTIVES. The Navy's response to SAPL's Original Comment 32 regarding would application of the State of Maine Risk Guidelines be more conservative than the CERCLA risk range (10^{-4} - 10^{-6}) is misleading. The Navy states that the State of Maine guidance of 10^{-5} (one in one hundred thousand) is less conservative than one in a million (10^{-6}). While this is true, the reality is that it is the other end of the CERCLA risk range, 10^{-4} or one in ten thousand, that is used in decision-making. For example, on page 2-20, the ROD states that for determining if Remedial Action Objective 1 is being met, carcinogenic risk estimates exceeding 10^{-4} are unacceptable. Application of the State of Maine guidelines would actually be more conservative, and preferable to SAPL. If the Navy is going to use 10^{-4} as its threshold for deciding unacceptable risk, it should say so up front and consistently throughout the ROD. Otherwise, the reader is confused or misled by the discussion of other acceptable risk levels or of "conservative" approaches to evaluating and addressing risks. For example, as noted in SAPL's Comment 34, the information presented in Sections 2.7 and 2.8 is confusing. Section 2.7 reported that risks were not acceptable for all scenarios. Then Section 2.8 on page 2-19 reported that risks are acceptable, yet noted that risks for all receptors exceed the State of Maine acceptable risk guidelines.

8. Page 2-28, Section 2.11 COMPARATIVE ANALYSIS OF ALTERNATIVES Overall Protection of Human Health and the Environment. In Original Comment 40, dated May 16,

2001, SAPL disagreed with the statement that Alternative 2 is as protective of the environment as Alternatives 3 and 4 because the installation of the cover under Alternatives 3 or 4 is anticipated to prevent infiltration of precipitation, which would in turn reduce leaching of contaminants from wastes. This would presumably decrease concentrations in leachate exiting the seeps along the shore. SAPL suggested a text revision. The Navy responded that the alternatives address OU3, and do not address OU6 (management of migration including in the seeps), so the text is appropriate. SAPL understands that OU6 addresses management of migration. The issue is with the statement that Alternative 2 provides the same amount of protection to the environment (and human health) as the other two alternatives. The comparative analysis should not be limited to the boundaries of Operable Unit 3. Contaminated dust, groundwater, or surface water doesn't know or care that it has left the boundaries of a site. The bottom line is that Alternative 2 does not provide the additional protection of a landfill cover. Therefore, it cannot be as protective of the environment or human health as Alternatives 3 and 4. For the same reason, Alternative 2 cannot be considered to have the same long-term effectiveness as Alternatives 3 and 4 (SAPL Original Comment 42)

9. Page 2-30, Section 2.11 COMPARATIVE ANALYSIS OF ALTERNATIVES

Community Acceptance. SAPL had commented (Original Comment 43) that the second sentence in the paragraph, which implies that community support for capping the landfill is unconditional, is misleading. The Navy responded with additional text, that while helpful in summarizing the nature of the public's response to the PRAP, still does not dispel the notion that the public supports the landfill cover unconditionally. As stated in the Original Comment, the comments received during the public comment period for the OU3 PRAP reveal a great deal of frustration regarding adequacy of the Navy's proposed alternative. The majority of comments state, in effect, that the cap alone is inadequate. It would be more accurate for the ROD to say that community support for covering the JILF with a hazardous waste cover, as proposed in Alternatives 3 or 4, is contingent upon addressing management of migration adequately, appropriately, and in a timely fashion, including testing of the seeps and biota.

10. Pages 3-3 - 3-5, Summary of Comments Received During the Public Comment Period and Navy Responses. **Comment 1:** *A cut-off barrier in addition to the cap (proposed in Alternative 3) is needed at this site to address tidal impacts to the sites, including impacts from migration of groundwater/seeps offshore, from sea level rise, and storm events.* The public expressed significant concern about the potential impacts of sea level rise and increased storm activity. The Navy's response to SAPL's Original Comment 54 and text revisions in effect state that the anticipated sea level rise/storm activity will not be factored into the landfill cover design due to slope stability concerns. Instead, the Navy will rely on monitoring, routine inspections and maintenance of the cover and erosion controls, and 5-year reviews to address public concerns regarding the effects of sea level rise/storm events. While appreciating the need to consider slope stability, SAPL remains concerned with the long-term effectiveness of the remedy, and believes the Navy's approach may prove short-sighted. It would be appropriate to consider slope stability under a variety of conditions during the design phase, including a range for sea level rise values

and storm events (including higher storm surges). The effect of rising sea level on the buried waste, including drums, must also be considered.

11. Page 3-8, Summary of Comments Received During the Public Comment Period and Navy Responses. Comment 8: *The remedial alternatives evaluated by the Navy are incomplete and there are a lack of adequate options. Alternative 5 was removed from consideration and there is no consideration of complete or partial removal.* SAPL had previously commented that the Navy should clarify if the re-evaluation of consolidation of portions of the landfill mentioned elsewhere in the ROD (page 1-3, for example) is the same as the partial removal alternative. The Navy responded that the re-evaluation is discussed in Comment 13 in the Responsiveness Summary and may differ from the FS because the objectives are different. Given that partial removal is specifically mentioned in Comment 8 in the Responsiveness Summary, it would be appropriate to mention in the Navy's response to Comment 8 that partial removal is under consideration.

12. Page 3-10, Summary of Comments Received During the Public Comment Period and Navy Responses. Comment 12: *Why was a last-minute decision made to separate OU3 and OU6?* SAPL had suggested in Original Comment 60, as well as 61 and 73, that the Navy's response should also acknowledge that the funding schedule played a role in the decision to move forward with the cap at this time. In the response to SAPL's comment, the Navy stated that the funding schedule did not play a role in the Navy's decision to move forward with the cap at this time. SAPL recalls that in at least one public forum, Navy and agency representatives discussing that, since there was no disagreement about the necessity to install a cover at the landfill, that phase of remediation should move forward while the issue of groundwater migrating via seeps was dealt with on a separate track. To hold up the cover until the migration issue was resolved might jeopardize the Navy's funding for OU3 remediation, which was already in the schedule.

13. Page 3-13 & 3-14, Summary of Comments Received During the Public Comment Period and Navy Responses. Comment 16: *Without containment of the JILF, daily tidal action and the current groundwater seepage will continue to flush contaminants from the JILF and introduce them into the intertidal nearshore and offshore environments. These represent continued risk to human health and the environment.* As SAPL has stated in previous comments, such as Original Comment 64, and as several people pointed out during the public meeting on the OU3 PRAP, the earlier risk assessments did not evaluate dioxin, because dioxin data had not been collected. The first dioxin results for the JILF were reported in 2000 after the limited soil sampling conducted as part of the drum investigation. This soil sampling does not adequately characterize dioxin contamination in soils or groundwater at the JILF. Therefore, any discussion of risk associated with JILF contamination likely underestimates total risk. Nowhere in the ROD does the Navy add this qualifier to presentation or discussion of risk assessment results. It is particularly important that the Navy do so in the Responsiveness Summary, where the public expresses specific concerns regarding risks associated with OU3.

14. Pages 3-14 & 3-15, Summary of Comments Received During the Public Comment Period and Navy Responses. Comment 18: *The Navy needs to implement a testing protocol for the seeps from the landfill as well as intertidal monitoring to insure that at a minimum the public can be notified if there is any danger of contamination through eating fish or shellfish from the waters around JILF.* SAPL had asked in Original Comment 66 how the three rounds of monitoring data that have been collected so far for OU4 compare with the December 2000 Fish Tissue Action Levels for Screening Evaluations issued by the Maine Bureau of Public Health's Environmental Toxicology Program. The Navy responded that the data had been submitted to the appropriate state agencies and it is the responsibility of the agencies to issue fish advisories if they are required. While SAPL agrees that the States of Maine and New Hampshire are responsible for issuing fish advisories, the Navy should also be responsible for comparing the monitoring data with appropriate and applicable action levels issued by the states. Therefore, the portion of SAPL's original comment regarding comparison of monitoring data with Fish Tissue Action Levels still requires a response.

15. Page 3-15, Summary of Comments Received During the Public Comment Period and Navy Responses. Comment 19: *What impact will dioxin concentrations detected in the soil at the JILF and in the sediment, mussel, and juvenile lobster near the JILF have on the results of the risk assessments? Dioxin testing of the seeps wasn't conducted; therefore there is not sufficient information to determine whether dioxins are leaching out of the landfill. Finding dioxin in the seeps could alter the risk level of the site significantly. Also evaluation of the available dioxin data may change the risk assessment conclusions significantly.* The Navy states in its response that performing a new risk assessment with dioxin data would not change the selection of the source control remedy because the cover and institutional controls will prevent contact or use of contaminated media within the landfill itself. However, the selected remedy does not address the migration of contaminants (including dioxin), which was a major component of the public's comments. As currently written, there is nothing in the Navy's response to Comment 19 in the Responsiveness Summary that reassures the public there will be adequate testing for dioxin at OU3 or OU6. Revisions are required.

16. Pages 3-15 & 3-16, Summary of Comments Received During the Public Comment Period and Navy Responses. Comment 20: *A strong potential exists for future releases from undiscovered steel drums in the JILF. Investigations to date were limited and did not prove that additional drums are not present elsewhere in the JILF.* The Navy's response to SAPL's Original Comment 68 states that the Navy feels that the response to Comment 20 in the Responsiveness Summary is adequate. SAPL maintains that the response to Comment 20 should indicate that the investigation of drums at the JILF has been limited, yet even that limited activity provided ample evidence that previously unknown materials are deposited in the JILF in containers made of corrodible material. In addition, the Navy's response to Comment 20 in the Responsiveness Summary states that "the USEPA, MEDEP, and the Navy all believe that the JILF does not contain hazardous wastes that are in high concentrations or that are likely to move in to the ground water". Since the MEDEP has brought up the issue of potential releases from

buried drums in previous comments, we are not sure this is an accurate depiction of the MEDEP's position. It would be more appropriate to state that the Navy believes that there is a low potential for buried drums of hazardous materials, and that any release can be appropriately addressed in a monitoring program for OU3, which is how the Navy responded to SAPL Original Comment 68.

17. Page 3-16, Summary of Comments Received During the Public Comment Period and Navy Responses. Comment 21: *Most of the quantitative analysis has focused solely on the human health risk at the immediate landfill site. However, there has been little data generated related to the overall health of the ecosystem or whether it will ever be safe to swim in the Piscataqua River.* In Original Comment 69, SAPL took issue with the part of the Navy's response to Comment 21 in the Responsiveness Summary that cites the risk assessments as indicating the offshore area of PHS is safe for human exposure. SAPL suggested that this part of the response should be amended to clarify the dioxin was not evaluated as part of the risk assessments cited. The Navy responded to SAPL's Original Comment with the statement that based on the data, the response is correct and that dioxin has not been identified as a chemical of concern in the offshore. This response is misleading and does not help clarify the situation. Given the public's concern regarding dioxin and the health of the offshore environment, it is not fair or right to say that offshore area is safe without adding the qualifier that the previous risk assessments did not evaluate dioxin.

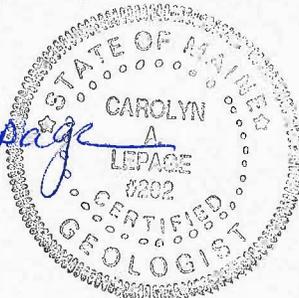
18. Pages 3-16 & 3-17, Summary of Comments Received During the Public Comment Period and Navy Responses. Comment 22: *The sediment in the offshore area of the Shipyard is heavily contaminated with lead and other toxins and there should be no additional contamination from the seeps added to what is already there.* The Navy's response to SAPL's Original Comment 70 refers to the response to SAPL's Original Comment 69. As stated in Comment 16, above, the Navy should qualify its response in the Responsiveness Summary, stating that dioxin was not evaluated as part of the risk assessment.

If you have any questions regarding the comments above, please give me a call at 207-777-1049.

Sincerely,



Carolyn A. Lepage, C.G.
President



cc: James Horrigan, SAPL
Iver McLeod, Department of Environmental Protection
Meghan Cassidy, Environmental Protection Agency